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7 dba Arcata Open Door Clinic

8  
9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**  
11

12 ELIZABETH MILLER,

13 Plaintiff,

14 v.

15 OPEN DOOR COMMUNITY HEALTH  
CENTERS, a California corporation, dba  
16 ARCATA OPEN DOOR CLINIC, and  
DOES ONE to FIFTY, inclusive,

17 Defendants.  
18 \_\_\_\_\_/

Case No. CV 08 1593 WDB

DEFENDANT OPEN DOOR  
COMMUNITY HEALTH CENTERS dba  
HUMBOLDT OPEN DOOR CLINIC'S  
ANSWER TO COMPLAINT FOR  
INJUNCTIVE RELIEF AND DAMAGES

**JURY TRIAL REQUESTED**

19  
20 Defendant OPEN DOOR COMMUNITY HEALTH CENTERS, a California  
21 corporation, doing business as ("dba") HUMBOLDT OPEN DOOR CLINIC  
22 ("Defendant") hereby answers the Complaint ("Complaint") of Plaintiff ELIZABETH  
23 MILLER ("Plaintiff") as follows:

24 **JURISDICTION AND VENUE**

25 1. The allegations contained in paragraph 1 are legal conclusions that the  
26 Defendant is not obligated to answer. Defendant submits that jurisdiction is proper in this  
27 Court pursuant to the provisions of 28 U.S.C. §1331 as a result of original jurisdiction  
28 based on federal question.



1 lacks sufficient information to form a belief and therefore expressly denies the allegations  
2 contained in paragraph 9 of the Complaint.

3 10. Defendant lacks sufficient information to form a belief and therefore denies  
4 the allegations contained in paragraph 10 of the Complaint.

5 11. Defendant admits that it is the owner and operator of the Humboldt Open Door  
6 Clinic located in Arcata, California. Defendant denies that the Humboldt Open Door Clinic  
7 was constructed after 1990. The remaining allegations contain legal conclusions that  
8 Defendant is not obligated to answer. To the extent that a response is required, Defendant  
9 lacks sufficient information to form a belief and therefore expressly denies the remaining  
10 allegations contained in paragraph 11 of the Complaint.

11 12. Defendant is informed and believes that Plaintiff visited the Arcata Open Door  
12 Clinic located in Arcata, California on or about February 20, 2008 for the purpose of  
13 obtaining medical services. Defendant expressly denies all other allegations contained in  
14 paragraph 12 of the Complaint.

15 13. Defendant is without sufficient knowledge to form a belief as to the truth  
16 of the allegations contained in paragraph 13 of the Complaint and, on that basis,  
17 expressly denies said allegations.

18 14. Defendant denies the allegations contained in paragraph 14 of the  
19 Complaint.

20 15. Defendant denies the allegations contained in paragraph 15 of the  
21 Complaint.

22 16. Defendant admits that Plaintiff seeks various remedies in the Complaint,  
23 but Defendant denies that Plaintiff is entitled to any of the relief requested. Defendant  
24 expressly denies all other allegations contained in paragraph 16 of the Complaint.

25 **FIRST CAUSE OF ACTION**

26 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990**

27 **(42 U.S.C. § 12101, et seq.)**

28 17. Paragraph 17 of the Complaint simply incorporates by reference prior

1 paragraphs of the Complaint. Defendant incorporates by reference, as though fully set forth,  
2 its responses stated above to each of the paragraphs Plaintiff incorporates by reference.

3 18. Paragraph 18 of the Complaint contains legal conclusions or principles that  
4 Defendant is not obligated to answer. To the extent that a response is required, Defendant  
5 denies Plaintiff's interpretation of the statutes, as the statutes speaks for themselves, and  
6 denies the allegations contained in paragraph 18 of the Complaint.

7 19. Paragraph 19 of the Complaint contains legal conclusions or principles that  
8 Defendant is not obligated to answer. To the extent that a response is required, Defendant  
9 denies Plaintiff's interpretation of the statutes, as the statutes speaks for themselves, and  
10 denies the allegations contained in paragraph 19 of the Complaint.

11 20. Paragraph 20 of the Complaint contains legal conclusions or principles that  
12 Defendant is not obligated to answer. To the extent that a response is required, Defendant  
13 denies Plaintiff's interpretation of the statutes, as the statutes speaks for themselves, and  
14 denies the allegations contained in paragraph 20 of the Complaint.

15 21. Paragraph 21 of the Complaint contains legal conclusions or principles that  
16 Defendant is not obligated to answer. To the extent that a response is required, Defendant  
17 denies Plaintiff's interpretation of the statutes, as the statutes speaks for themselves, and  
18 denies the allegations contained in paragraph 21 of the Complaint.

19 22. Paragraph 22 of the Complaint contains legal conclusions or principles that  
20 Defendant is not obligated to answer. To the extent that a response is required, Defendant  
21 denies Plaintiff's interpretation of the statutes, as the statutes speaks for themselves, and  
22 denies the allegations contained in paragraph 22 of the Complaint.

23 23. Paragraph 23 of the Complaint contains legal conclusions or principles that  
24 Defendant is not obligated to answer. To the extent that a response is required, Defendant  
25 denies Plaintiff's interpretation of the statutes, as the statutes speaks for themselves, and  
26 denies the allegations contained in paragraph 23 of the Complaint.

27 24. Paragraph 24 of the Complaint contains legal conclusions or principles that  
28 Defendant is not obligated to answer. To the extent that a response is required, Defendant

1 denies Plaintiff's interpretation of the statutes, as the statutes speaks for themselves, and  
2 denies the allegations contained in paragraph 24 of the Complaint.

3 25. Paragraph 25 of the Complaint contains legal conclusions or principles that  
4 Defendant is not obligated to answer. To the extent that a response is required, Defendant  
5 denies the allegations as contained in paragraph 25 of the Complaint.

6 26. Paragraph 26 of the Complaint contains legal conclusions or principles that  
7 Defendant is not obligated to answer. To the extent that a response is required, Defendant  
8 denies Plaintiff's interpretation of the statutes, as the statutes speaks for themselves, and  
9 denies the allegations contained in paragraph 26 of the Complaint.

10 27. Paragraph 27 of the Complaint contains legal conclusions or principles that  
11 Defendant is not obligated to answer. To the extent that a response is required, Defendant  
12 denies Plaintiff's interpretation of the statutes, as the statutes speaks for themselves, and  
13 denies the allegations contained in paragraph 27 of the Complaint.

14 28. Defendant denies the allegations contained in paragraph 28 of the Complaint.

15 29. Paragraph 29 of the Complaint contains legal conclusions or principles that  
16 Defendant is not obligated to answer. To the extent that a response is required, Defendant  
17 denies Plaintiff's interpretation of the statutes, as the statutes speaks for themselves, and  
18 denies the allegations contained in paragraph 29 of the Complaint.

19 30. Defendant admits that Plaintiff seeks certain remedies in the Complaint, but  
20 Defendant denies that Plaintiff is entitled to any of the relief requested in paragraph 30 of the  
21 Complaint. Defendant denies all other allegations contained in paragraph 30 of the  
22 Complaint.

23 31. Defendant denies the allegations contained in paragraph 31 of the Complaint.

24 32. Defendant admits that Plaintiff seeks certain remedies in the Complaint, but  
25 Defendant denies that Plaintiff is entitled to any of the relief requested in paragraph 32 of the  
26 Complaint. Defendant denies all other allegations contained in Paragraph 32 of the  
27 Complaint.

28 33. Defendant admits that Plaintiff seeks certain remedies, but Defendant denies

1 that Plaintiff is entitled to any of the relief requested in paragraph 33 of the Complaint.  
 2 Defendant denies all other allegations contained in Paragraph 33 of the Complaint.

### 3 **SECOND CAUSE OF ACTION**

#### 4 **BREACH OF STATUTORY PROTECTIONS FOR PERSONS WITH PHYSICAL** 5 **DISABILITIES (California Health & Safety Code § 19955, et seq.)**

6 34. Paragraph 34 of the Complaint simply incorporates by reference prior  
 7 paragraphs of the Complaint. Defendant incorporates by reference, as though fully set forth,  
 8 its responses stated above to each of the paragraphs Plaintiff incorporates by reference.

9 35. Paragraph 35 of the Complaint contains legal conclusions or principles that  
 10 Defendant is not obligated to answer. To the extent that a response is required, Defendant  
 11 denies Plaintiffs interpretation of the statutes, as the statutes speaks for themselves, and  
 12 denies the allegations contained in paragraph 35 of the Complaint.

13 36. Paragraph 36 of the Complaint contains legal conclusions or principles that  
 14 Defendant is not obligated to answer. To the extent that a response is required, Defendant  
 15 denies Plaintiffs interpretation of the statutes, as the statutes speaks for themselves, and  
 16 denies the allegations contained in paragraph 36 of the Complaint.

17 37. Paragraph 37 of the Complaint contains legal conclusions or principles that  
 18 Defendant is not obligated to answer. To the extent that a response is required, Defendant  
 19 denies Plaintiff's interpretation of the statutes, as the statutes speaks for themselves, and  
 20 denies the allegations contained in paragraph 37 of the Complaint.

21 38. Paragraph 38 of the Complaint contains legal conclusions or principles that  
 22 Defendant is not obligated to answer. To the extent that a response is required, Defendant  
 23 denies Plaintiff's interpretation of the statutes, as the statutes speaks for themselves, and  
 24 denies the allegations contained in paragraph 38 of the Complaint

25 39. Defendant is without sufficient knowledge to form a belief as to the truth of  
 26 the allegations contained in paragraph 39 of the Complaint and, on that basis, denies said  
 27 allegations.

28 40. Defendant is without sufficient knowledge to form a belief as to the truth of

1 the allegations contained in paragraph 40 of the Complaint and, on that basis, denies said  
2 allegations.

3 41. Paragraph 41 of the Complaint contains legal conclusions or principles that  
4 Defendant is not obligated to answer. To the extent that a response is required, Defendant  
5 denies Plaintiff's interpretation of the statutes, as the statutes speaks for themselves, and  
6 denies the allegations contained in paragraph 41 of the Complaint.

7 42. Defendant denies the allegations contained in paragraph 42 of the Complaint.

8 43. Defendant denies the allegations contained in paragraph 43 of the Complaint.

9 44. Defendant denies the allegations contained in paragraph 44 of the Complaint.

10 45. Defendant denies the allegations contained in paragraph 45 of the Complaint.

11 46. Defendant admits that Plaintiff seeks certain remedies, but Defendant denies  
12 that Plaintiff is entitled to any of the relief requested in paragraph 46 of the Complaint.  
13 Defendant denies all other allegations contained in paragraph 46 of the Complaint

14 47. Defendant admits that Plaintiff seeks certain remedies, but Defendant denies  
15 that Plaintiff is entitled to any of the relief requested in paragraph 47 of the Complaint.  
16 Defendant denies all other allegations contained in paragraph 47 of the Complaint.

17 48. Defendant denies the allegations contained in paragraph 48 of the Complaint.

18 49. Defendant admits that Plaintiff seeks certain remedies, but Defendant denies  
19 that Plaintiff is entitled to any of the relief requested in paragraph 49 of the Complaint.  
20 Defendant denies all other allegations contained in paragraph 49 of the Complaint.

21 50. Defendant admits that Plaintiff seeks certain remedies, but Defendant denies  
22 that Plaintiff is entitled to any of the relief requested in paragraph 50 of the Complaint.  
23 Defendant denies all other allegations contained in paragraph 50 of the Complaint.

### 24 **THIRD CAUSE OF ACTION**

### 25 **VIOLATIONS OF CALIFORNIA'S CIVIL RIGHTS ACT**

#### 26 **(California Civil Code § 54, 54.1 and 54.3.)**

27 51. Paragraph 51 of the Complaint simply incorporates by reference prior  
28 paragraphs of the Complaint. Defendant incorporates by reference, as though fully set forth,

1 its responses stated above to each of the paragraphs Plaintiff incorporates by reference.

2 52. Paragraph 52 of the Complaint contains legal conclusions or principles that  
3 Defendant is not obligated to answer. To the extent that a response is required, Defendant  
4 denies Plaintiff's interpretation of the statutes, as the statutes speaks for themselves, and  
5 denies the allegations contained in paragraph 52 of the Complaint. Defendant is without  
6 sufficient knowledge to form a belief whether or not Plaintiff is a person with a disability.  
7 Defendant denies all other allegations contained in paragraph 52 of the Complaint.

8 53. Paragraph 53 of the Complaint contains legal conclusions or principles that  
9 Defendant is not obligated to answer. To the extent that a response is required, Defendant  
10 denies Plaintiff's interpretation of the statutes, as the statutes speaks for themselves, and  
11 denies the allegations contained in paragraph 53 of the Complaint.

12 54. Defendant denies the allegations contained in paragraph 54 of the Complaint.

13 55. Defendant admits that Plaintiff seeks certain remedies in the Complaint, but  
14 Defendant denies that Plaintiff is entitled to any of the relief requested in paragraph 55 of the  
15 Complaint. Defendant denies all other allegations contained in paragraph 55 of the  
16 Complaint.

17 56. Defendant admits that Plaintiff seeks certain remedies in the Complaint, but  
18 Defendant denies that Plaintiff is entitled to any of the relief requested in paragraph 56 of the  
19 Complaint. Defendant denies all other allegations contained in paragraph 56 of the  
20 Complaint.

21 57. Defendant admits that Plaintiff seeks certain remedies in the Complaint, but  
22 Defendant denies that Plaintiff is entitled to any of the relief requested in paragraph 57 of the  
23 Complaint. Defendant denies all other allegations contained in paragraph 57 of the  
24 Complaint.

25 58. Defendant denies the allegations contained in paragraph 58 of the Complaint.

26 59. Defendant admits that Plaintiff seeks certain remedies in the Complaint, but  
27 Defendant denies that Plaintiff is entitled to any of the relief requested in paragraph 59 of the  
28 Complaint. Defendant denies all other allegations contained in paragraph 59 of the



1 Complaint.

2 60. Defendant denies the allegations contained in paragraph 60 of the Complaint.

3 61. Defendant denies the allegations contained in paragraph 61 of the Complaint.

4 62. Defendant denies the allegations contained in paragraph 62 of the Complaint.

5 63. Defendant admits that Plaintiff seeks certain remedies in the Complaint, but  
6 Defendant denies that Plaintiff is entitled to any of the relief requested in paragraph 63 of the  
7 Complaint. Defendant denies all other allegations contained in paragraph 63 of the  
8 Complaint.

9 **FOURTH CAUSE OF ACTION**

10 **VIOLATIONS OF CALIFORNIA'S UNRUH CIVIL RIGHTS ACT**

11 **(California Civil Code § 51 and 51.5.)**

12 64. Paragraph 64 of the Complaint simply incorporates by reference prior  
13 paragraphs of the Complaint. Defendant incorporates by reference, as though fully set forth,  
14 its responses stated above to each of the paragraphs Plaintiff incorporates by reference.

15 65. Defendant denies the allegations contained in paragraph 65 of the Complaint.

16 66. Paragraph 66 of the Complaint contains legal conclusions or principles that  
17 Defendant is not obligated to answer. To the extent that a response is required, Defendant  
18 denies Plaintiff's interpretation of the statutes, as the statutes speaks for themselves, and  
19 denies the allegations contained in paragraph 66 of the Complaint.

20 67. Paragraph 67 of the Complaint contains legal conclusions or principles that  
21 Defendant is not obligated to answer. To the extent that a response is required, Defendant  
22 denies Plaintiff's interpretation of the statutes, as the statutes speaks for themselves, and  
23 denies the allegations contained in paragraph 67 of the Complaint.

24 68. Defendant admits that Plaintiff seeks certain remedies, but Defendant denies  
25 that Plaintiff is entitled to any of the relief requested in paragraph 68 of the Complaint.  
26 Defendant denies all other allegations contained in paragraph 68 of the Complaint.

27 **AFFIRMATIVE DEFENSES**

28 As separate and distinct affirmative defenses to Plaintiff's unverified Complaint,

1 Defendant alleges as follows:

2 **FIRST AFFIRMATIVE DEFENSE**

3 1. Defendant alleges that neither the Complaint, nor any cause of action set  
4 forth therein, states facts sufficient to constitute a cause of action against Defendant.

5 **SECOND AFFIRMATIVE DEFENSE**

6 2. Defendant alleges that Plaintiff's claims are barred from any remedy, or  
7 certain remedies, by the doctrine of estoppel.

8 **THIRD AFFIRMATIVE DEFENSE**

9 3. Defendant alleges that Plaintiff's claims are barred, in whole or in part,  
10 because Plaintiff has not suffered, and will not suffer, irreparable harm as a result of any  
11 of the alleged conduct and/or alleged omissions of Defendant.

12 **FOURTH AFFIRMATIVE DEFENSE**

13 4. Defendant alleges that Plaintiffs claims for injunctive relief are barred, in  
14 whole or in part, because Plaintiff's legal remedies are adequate.

15 **FIFTH AFFIRMATIVE DEFENSE**

16 5. Defendant alleges that Plaintiff's claims are barred from any remedy, or  
17 certain remedies, under the doctrine of laches.

18 **SIXTH AFFIRMATIVE DEFENSE**

19 6. Defendant alleges that Plaintiff's claims are barred from any remedy, or  
20 certain remedies, under the doctrine of unclean hands.

21 **SEVENTH AFFIRMATIVE DEFENSE**

22 7. Defendant alleges that Plaintiff lacks standing to sue and fails to allege a  
23 case or controversy under the law.

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 8. Defendant alleges that Plaintiff has failed to mitigate her alleged damages.

26 **NINTH AFFIRMATIVE DEFENSE**

27 9. Defendant alleges that California Civil Code §§ 51, 52, 54, 54.1 and 54.3  
28 and California Health and Safety Code §§ 19955 *et seq.* do not create a private cause of

1 action for damages for alleged discrimination. California Civil Code § 55 provides only a  
2 private cause of action to enjoin such alleged statutory violations.

3 **TENTH AFFIRMATIVE DEFENSE**

4 10. Assuming *arguendo* that Plaintiff was denied access to a place of public  
5 accommodation (which Defendant expressly denies), Defendant alleges that such  
6 exclusion was not unlawful because access could not be provided to Plaintiff without  
7 causing undue hardship to Defendant.

8 **ELEVENTH AFFIRMATIVE DEFENSE**

9 11. Assuming *arguendo* that Plaintiff was denied access to the subject facility  
10 (which Defendant expressly denies), Defendant alleges that such exclusion was not  
11 unlawful because access could not be provided to Plaintiff without fundamentally altering  
12 the nature and/or character of the business establishment and the goods and services  
13 provided therein.

14 **TWELFTH AFFIRMATIVE DEFENSE**

15 12. Assuming *arguendo* that Plaintiff was denied access to the subject facility  
16 (which Defendant expressly denies), Defendant alleges that such exclusion was not  
17 unlawful because barrier removal was not "readily achievable."

18 **THIRTEENTH AFFIRMATIVE DEFENSE**

19 13. Assuming *arguendo* that Plaintiff was denied access to the subject facility  
20 (which Defendant expressly denies), Defendant alleges that such exclusion was not  
21 unlawful because the facility operated by Defendant was not a newly constructed facility  
22 and did not have any alterations, requiring compliance with Title III of the Americans  
23 with Disabilities Act, California Health & Safety Code Section 19955 et seq., or Title 24  
24 of the California Code of Regulations, during the relevant time frame.

25 **FOURTEENTH AFFIRMATIVE DEFENSE**

26 14. Assuming *arguendo* that the facilities at issue were designed, developed,  
27 constructed, modified and/or altered in violation of federal and/or California law (which  
28 Defendant expressly denies), Defendant alleges that all legal requirements for access by

1 disabled persons have been met through the obtaining of necessary permits from  
2 appropriate legal authorities for the construction, alteration or modification of the  
3 premises, and that Defendant reasonably relied on the actions of such legal authorities.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 15. Defendant alleges that California Civil Code §§ 54.3 and 55, providing for  
6 public prosecution and private injunctive relief for violations of California Civil Code  
7 §54.1, are to be exclusive, and that damages provided for by California Civil Code §52  
8 are not recoverable for such violations.

9 **SIXTEENTH AFFIRMATIVE DEFENSE**

10 16. Assuming *arguendo* that the facilities at issue were designed, developed,  
11 constructed, modified and/or altered in violation of federal and/or California law (which  
12 Defendant expressly denies), Defendant alleges that it had no such knowledge.

13 **SEVENTEENTH AFFIRMATIVE DEFENSE**

14 17. Defendant alleges that it did not deny Plaintiff full and equal access to  
15 goods, services, facilities, privileges, advantages or accommodations within a public  
16 accommodation owned, leased and/or operated by Defendant as required by California  
17 and federal laws, including, but not limited to, the Americans with Disabilities Act, 42  
18 U.S.C. §§ 12101 *et seq.*, the California Disabled Persons Act, California Civil Code §§ 54  
19 *et seq.*, the California Unruh Civil Rights Act, California Civil Code §§ 51 *et seq.*, and the  
20 California Health and Safety Code Part 5.5.

21 **EIGHTEENTH AFFIRMATIVE DEFENSE**

22 18. Defendant alleges that it provided Plaintiff with alternative methods for  
23 access to the facility.

24 **NINETEENTH AFFIRMATIVE DEFENSE**

25 19. Defendant alleges that Plaintiff has failed to exhaust the administrative  
26 remedies available to her.

27 **TWENTIETH AFFIRMATIVE DEFENSE**

28 20. Defendant alleges that Plaintiff failed to notify Defendant of her need, if

1 any, for equivalent service and access or accommodation, and failed to allow Defendant  
2 the opportunity to provide such equivalent service and access or accommodation.

3 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

4 21. Defendant alleges that the acts or omissions alleged were the proximate  
5 result of the conduct of third persons such that Defendant cannot be held liable for such  
6 acts or omissions, and that said third persons owe a duty to Defendant to indemnify it for  
7 any damages, attorneys' fees and/or costs incurred as a result of its litigation.

8 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

9 22. Defendant alleges that the alleged acts or omissions to which Plaintiff  
10 refers which form the basis of Plaintiff's Complaint were done, if at all, in good faith,  
11 honestly and without malice and Defendant has not violated any rights Plaintiff may have  
12 under federal, state or local laws, regulations or guidelines.

13 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

14 23. Defendant alleges that the cost of some or all of the modifications to the  
15 subject properties that Plaintiff seeks to have imposed upon Defendant is disproportionate  
16 in terms of the cost and scope to that of any alterations made within the statutory period,  
17 if any.

18 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

19 24. Defendant alleges that it granted Plaintiff access to the subject facilities,  
20 and if Plaintiff was in fact excluded from the subject facility (which Defendant expressly  
21 denies), any such exclusion was for reasons rationally related to the services performed  
22 and the facilities provided by Defendant.

23 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

24 25. Defendant alleges that it has fulfilled any obligation that it may have had to  
25 reasonably accommodate Plaintiff's alleged disabilities.

26 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

27 26. Defendant alleges that any and all actions taken by Defendant, or anyone  
28 acting on its behalf, if any, with respect to Plaintiff or the conditions of the establishment

1 in question, were for lawful and legitimate, non-discriminatory reasons.

2 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

3 27. Defendant alleges that the Complaint and each and every cause of action  
4 alleged therein is barred in that at all times relevant hereto, Defendant acted reasonably,  
5 in good faith and without malice, based upon the relevant facts and circumstances known  
6 to it at the time it acted, if at all.

7 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

8 28. Defendant alleges that Defendant's services and/or facilities provided to  
9 the public are readily accessible to and usable by persons with disabilities as required by  
10 California and federal laws, including, but not limited to, the Americans with Disabilities  
11 Act, 42 U.S.C. §§ 12101 *et seq.*, the California Disabled Persons Act, California Civil  
12 Code §§ 54 *et seq.*, the California Unruh Civil Rights Act, California Civil Code §§ 51 *et*  
13 *seq.*, and the California Health and Safety Code Part 5.5.

14 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

15 29. Defendant alleges that Plaintiff was not a true customer of the business, and  
16 that Plaintiff was merely a tester engaged in visiting the subject facilities in order to  
17 ascertain whether there were any purported ADA and/or related violations.

18 **THIRTIETH AFFIRMATIVE DEFENSE**

19 30. Assuming *arguendo* that Plaintiff was denied access to the subject facility  
20 (which Defendant expressly denies), Defendant alleges that it would be structurally  
21 impracticable to design and construct the facility to make it reasonably accessible to  
22 people with disabilities.

23 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

24 31. Assuming *arguendo* that Plaintiff was denied access to the subject facility  
25 (which Defendant expressly denies), Defendant alleges that such exclusion was not  
26 unlawful because the facility in which Defendant operates their business was not a newly  
27 constructed facility, nor did it have any alterations requiring compliance with any  
28 applicable law during the relevant time frame.

1 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

2 32. Defendant alleges that Plaintiff did not exercise due caution or care with  
3 respect to matters alleged in the Complaint and if, in fact, Plaintiff suffered any damage  
4 or injury, Plaintiff contributed in whole or in part to such damage or injury, and,  
5 therefore, any remedy or recovery to which Plaintiff might otherwise be entitled must be  
6 denied or reduced accordingly.

7 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

8 33. Defendant alleges that Plaintiff had equal access to the facilities at issue as  
9 non-disabled individuals.

10 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

11 34. Defendant alleges that Plaintiff is not legally entitled to recover any  
12 attorneys' fees with regard to this matter.

13 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

14 35. Defendant alleges that Plaintiff has failed to state facts sufficient to set forth  
15 claim(s) for treble damages.

16 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

17 36. Defendant alleges that Plaintiff has failed to allege special damages with the  
18 requisite degree of specificity.

19 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

20 37. Defendant alleges that it owed no duty of care toward Plaintiff.

21 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

22 38. Defendant alleges that Plaintiff's alleged injuries and alleged damages, if  
23 any, were proximately caused and contributed to by the negligence of Plaintiff.

24 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

25 39. Defendant alleges that Plaintiff is not entitled to equitable relief insofar as  
26 she has adequate remedies at law.

27 **FORTIETH AFFIRMATIVE DEFENSE**

28 40. Defendant reserves the right to amend its answer should it later discover

1 facts demonstrating the existence of new and/or additional affirmative defenses, and/or  
2 should a change in the law support the inclusion of new and/or additional defenses.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Defendant prays that:

5 1. Plaintiff take nothing by way of her Complaint and each claim for relief  
6 therein;

7 2. The Complaint and each claim for relief therein be dismissed in entirety  
8 with prejudice;

9 3. Judgment be entered in favor of Defendant and against Plaintiff;

10 4. Defendant recovers its costs and reasonable attorneys' fees incurred herein  
11 as Plaintiff and her counsel are vexatious litigants who filed and pursued these frivolous  
12 claims. *See Molski v. Mandarin Touch Restaurant*, 359 F. Supp. 2d 924 (CD. Cal. 2005)  
13 (plaintiffs' counsel must seek leave of court before filing any claims under Americans  
14 With Disabilities Act), *affirmed by Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047  
15 (9th Cir. 2007); *Molski v. Mandarin Touch Restaurant*, 347 F. Supp. 2d 860 (C.D. Cal.  
16 2004) (claim under American With Disabilities Act against Defendant constituted  
17 vexatious litigation), *affirmed by Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047 (9th  
18 Cir. 2007).

19 5. Defendant be awarded its costs of suit herein; and

20 6. The Court grant Defendant such additional relief as is just and proper.  
21

22 Dated: June 4, 2008

JANSSEN, MALLOY, NEEDHAM, MORRISON,  
REINHOLTSSEN, CROWLEY & GRIEGO, LLP

24 By: \_\_\_\_\_/s/\_\_\_\_\_  
25 MICHAEL MORRISON  
26 FRANCES K. GREENLEAF  
27 Attorneys for Defendant  
28 Open Door Community Health Centers  
dba Humboldt Open Door Clinic